IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.432 OF 2007

Shri Ankush Bhagwanrao Gore & Anr. : Applicants
(Orig.Deft.Nos.1 & 3)

V/s.

Anant Ramchandra Dhekane & Ors. : Respondents
(Resp.Nos.1 to 6-Orig.Pltffs.,
Resp.Nos.7&8-Orig.Deft.Nos.2&4,
respectively)

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Mr.Siddharta Karpe holding for Mr.S. Pawar for the applicants.

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**CORAM : S.A.BOBDE, J.**

DATE : OCTOBER 16, 2007.

**P.C**.

1. The applicants are aggrieved by the order of the trial Court rejecting their application under Order VII Rule 11 read with section 151 of the Code of Civil Procedure. The respondent nos.1 to 6 have filed two suits against the applicants. Regular Civil Suit no.115 of 2003 has been filed by the respondent nos.1 to 6 against the applicants and the respondent nos.7 and 8 for an injunction restraining them from carrying out certain excavation. In that suit, the trial Court has granted an injunction which is still in force. The second suit, being Special Civil Suit no.145 of 2006, has been filed by the respondent nos.5 & 6 claiming damages and compensation for the illegal excavation done by the applicants.

2. In this background, the applicants who are defendants in the pending suits, applied for rejection of the plaint in the first suit filed by the respondent nos.1 to 6 that the cause of action has become infructuous. According to the applicants, the suit has become infructuous because the respondents have filed another suit claiming damages and compensation on account of the illegal excavation, which was the subject-matter of the first suit. In the applicants' submission, the filing of the second suit ip so facto signals the ending of the cause of action in the first suit because, according to the applicants, no compensation could have been asked for unless the excavation work was already over and, therefore, the suit for injunction against that work had become infructuous.

3. It is not possible to accept the contention that since the plaintiff has made a prayer for compensation in another suit, it must be inferred that the cause of action against the wrongful act of the defendant in the suit for injunction is over and the plaint must be rejected. The defendant may again start doing the wrongful act, as he has allegedly done or another wrongful act in its place and, therefore, the suit for injunction cannot be treated as infructuous. It all depends on the circumstances. In this matter, in any case, it is not possible to treat the earlier suit as having come to an end since, according to the respondents, the applicants have breached the

injunction granted in the respondents' favour in the first suit.

4. In these circumstances, the trial Court cannot be said to have committed an error or acted with material irregularity in rejecting the applicants' application.

5. The learned counsel for the applicants relied on the judgement of the Supreme Court in Shipping Corporation of India Ltd. v. Machado Brothers (AIR 2004 SC 2093) where the Supreme Court held, inter alia, that the Court has all the necessary powers under section 151 to dismiss the suit on the ground that it has become infructuous. In the present case, however, it is clear that the Court was of view that the earlier suit has not become infructuous. Since there is no defect in that view, I see no reason to observe that the trial Court ought to have exercised the jurisdiction under section 151.

6. There is no merit in the revision which is hereby dismissed.

S.A. BOBDE, J.